

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDRES CRISTOBAL,

Petitioner,

v.

NATHALIE ASHER, et al.,

Respondents.

CASE NO. C20-1493-RSM-BAT

ORDER OF DISMISSAL

The Court has reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge, Petitioner's Objections and the Response from Respondents, and the remaining record. The Court finds no error in Judge Tsuchida's R&R. This Court agrees that Petitioner has failed to show that a bond redetermination request would be futile. *See* Dkt. #19 at 6–7. It is illogical for Petitioner to argue, as he does in his Objections, that such a request would be futile because he seeks to shift the burden to the Government—Petitioner may seek many things, including immediate release, which have no bearing on whether such a request would be futile. Petitioner also argues that such a request would be futile because Respondents have argued in this case that he cannot demonstrate materially changed circumstances because Petitioner has not presented any material change in circumstances. The Court finds that this fails to demonstrate futility; simply because Petitioner has not presented materially changed

1 circumstances in this case, where he is attempting to argue futility, does not demonstrate futility.

2 In any event, the Court agrees with Respondents' analysis on this issue in their Response brief:

3 Petitioner, who is now represented by experienced immigration
4 counsel at the administrative level, ignores other potential bases for
5 material change in circumstances. For instance, Petitioner's initial
6 bond hearing occurred only months after his criminal conviction.
7 Now, an IJ potentially could consider the length of time since
8 Petitioner's last conviction to be a material change. However, the
9 Government, like the Court, cannot predict the outcome of such a
10 request since Petitioner never exercised this administrative
11 opportunity.

8 Dkt. #21 at 5.

9 The Court further agrees with Judge Tsuchida's reasoning on the due process claim
10 through the *Mathews* test and does not find any error. *See* Dkt. 19 at 8–9. Given all of the above
11 the Court finds and ORDERS:

12 (1) The Court ADOPTS the Report and Recommendation.

13 (2) The case is dismissed with prejudice.

14 (3) The Clerk is directed to send copies of this Order to the parties and to Judge
15 Tsuchida.

16 Dated this 2nd day of March, 2021.

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20 RICARDO S. MARTINEZ
21 CHIEF UNITED STATES DISTRICT JUDGE
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